S.B.Civil Revision Petition No.401/2006

Jagdish Waghwani.
vs.
M/s. Nirmal S. Chittora

Date : 21.8.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the petitioner.

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Heard learned counsel for the petitioner.

The plaintiff/petitioner has preferred this revision petition to challenge the order dated 25.7.2006 by which the petitioner's application for review of the decision given on one of the issue in the judgment and decree dated 21.8.2003 has been rejected by the trial court.

According to learned counsel for the petitioner, the plaintiff filed suit for recovery of certain amount on the ground that the plaintiff advanced money to the defendant by Cheque no.432637 for sum of Rs.36,990/-. The plaintiff took another plea that for repayment of the said loan amount, the defendant gave a cheque to the plaintiff dated 14.2.1994 but that cheque was dishonoured.

According to learned counsel for the petitioner, the trial court decided the issue no.1 referred above against the plaintiff and held that the plaintiff failed to prove

that he advance the money of Rs.36,990/- to the defendant through cheque no.432637 but the trial court decided the issue no.2 against the defendant holding that the defendant gave a cheque to the plaintiff for repayment of loan amount by drawing presumption under Section 139 of the Negotiable Instruments Act. According to learned counsel for the petitioner, the court below could not have drawn presumption under Section 139 of the Negotiable Instruments Act because the provisions of Section 138 of the Negotiable Instruments Act has not been complied with, therefore, no presumption could have been drawn under Section 139 of the Negotiable Instruments Act in favour of the plaintiff.

I considered the submissions of learned counsel for the petitioners and perused the judgment of the court below dated 21.8.2003.

It appears that this was a specific point raised by the petitioner before the court below that since the petitioner failed to prove advancement of loan by cheque no.432637, therefore, issue no.2 required to be decided in favour of the defendant. It appears that the trial court in detail considered the issue no.2 separately and found that the defendant himself admitted the signatures over the cheque dated 14.2.1994, cheque was duly presented in the bank and the same was returned without payment. Memo was placed on record by the plaintiff as Ex.2, notice was served by the plaintiff and copy of which was placed on Ex.3, postal receipt was placed as Ex.4 and acknowledgement receipt was

placed as Ex.5. In view of the above, the court below held that the plaintiff was holder of negotiable instrument and the said negotiable instrument – cheque was returned by the bank without payment. In view of the above, if the petitioner is of the view that the court below committed error of law, then the present controversy is not of such nature where it can be said without going deep in the legal position that the court below has committed error of law. Even if error of law can be corrected in review proceedings, then also, that was required to be so clear that no deep investigation is needed for finding out the exact and correct legal position.

In view of the above, if the trial court has dismissed the review petition, this Court is not inclined to interfere in the said order while exercising the revisional jurisdiction under Section 115 CPC.

Consequently, this revision petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya